S.B.CIVIL WRIT PETITION NO.1076/1991
Ram Gopal v. State of Raj.& Ors.

Date of Order :: 6th December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The order dated 18.2.1991 passed by the Collector (Stamps) while accepting the reference made by Sub Registrar, Sumerpur under Section 47-A(2)(Raj. Amendment) of the Indian Stamps Act, 1899 (hereinafter referred to as “the Act of 1899”) is under challenge in present writ petition. The document with regard to which reference was made by Sub Registrar, Sumerpur on 28.12.1989 was registered and returned to the petitioner on 5.9.1985. The Collector (Stamps), Pali by order impugned dated 18.2.1991 declared the document undervalued and, therefore, ordered to deposit deficient stamp duty with fine.

The petitioner has challenged the order impugned mainly on two counts: viz. (1)the Sub Registrar, Sumerpur made reference under Section 47-A (1) of the Act of 1899 to the Collector with a certified copy of the document registered but not with the original document itself as required under Section 47-A(1) of the said Act, and (2)the reference was made at a belated stage and, therefore, the same is arbitrary.

A reply to the writ petition is filed on behalf of the respondents stating therein that the sale deed was registered on undervaluation of the property concerned, therefore, the Sub Registrar rightly referred the document for assessment of value and determination of stamp duty to the Collector (Stamps) Pali.

Heard counsel for the parties.

It is not at all in dispute that the document (sale deed) was registered by the Sub Registrar, Sumerpur on 5.9.1985 and was returned to the petitioner immediately thereafter. The reference was made by the Sub Registrar to the Collector (Stamps) on 18.12.1989 i.e. after a period of more than four years from the date of registration. It is true that the Sub Registrar is empowered to make reference of an undervalued document before or after registering it in accordance with the provisions of Section 47-A of the Act of 1899 but this power is always required to be exercised within a reasonable time. The authority vested with a power must exercise powers with all diligence and without any inordinate and unexplained delay.

In the present case the Sub Registrar decided to make reference in accordance with the provisions of Section 47-A of the Act of 1899 after a lapse of more

than a period of four years. No reason at all is given for causing such delay. The power to make reference in present case has been exercised by the Sub Registrar at belated stage which is certainly having an essence of arbitrariness. On this count alone the order making reference and the order accepting reference are bad.

The next contention of counsel for the petitioner is that the original document was not sent to the Collector (Stamps) by registering officer before or after registering the document as required under Section 47-A(1) of the Act of 1899 and only a certified copy was sent to the Collector by registering officer. This Court in the case of Shankarlal & Ors. v. State of Rajasthan & Ors., SBCWP No.568/1993, decided on 29.11.2005, while adjudicating the same question held as under:-

> "From reading of the provisions of Section 47-A of the Act of 1899 it is clear that an instrument relating to an immovable property chargeable with an ad valorem duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instrument, reason to believe that the market-value of the property has not been truly set forth in the instrument, he may, after or before registering the instrument, send it in original to the Collector for determination of the market-value and to assess and charge the duty. From reading of the provision it

> is clear that while making a reference to the Collector the registering authority before or after registering the instrument is required to send the document in original to the Collector for determination of market value and for making assessment of the duty required to be charged. Once a document is registered and returned to the party concerned then the document in its original cannot be sent to the Collector for exercising powers to determine and assess the stamp duty. In the present case the original document was returned to the petitioner after its registration, therefore, the original document was with petitioner and registering authority was not at all in position to send the same to the Collector as prescribed under Section 47-A (1) of the Act of 1989. The sending of original document to the Collector is a mandatory condition and in absence of it no reference is competent. In view of it, the Sub-Registrar was not at all competent to initiate the proceedings under Section 47-A of the Act of 1899 under the notice dated 1.12.1992. The notice impugned therefore is incompetent."

In view of law laid down by this Court in the case of Shankarlal (supra) the reference itself was incompetent as the original document was not sent to the Collector while making reference. It is true that under sub-section (4) to Section 47-A of the Act of 1899 the Collector may call certified copy of the original document after recording reasons for non-production of the original document, however, in the

present case no power under sub-section (4) was exercised by the Collector. I also perused the original record of the case, a certified copy of which is also placed on record by counsel for the respondents, from perusal of which it is apparent that no reasons are recorded by the Collector (Stamps), Pali for non-production of the original document.

In view of whatever discussed above the order impugned dated 18.2.1991 passed by Additional Collector (Stamps), Pali as well as the reference made by Sub Registrar, Sumerpur under the order dated 28.12.1989 deserves to be quashed and set aside.

The writ petition, therefore, is allowed and the orders impugned referred above are hereby quashed.

(GOVIND MATHUR),J.

kkm/ps.